

New Federal Workforce Mobility Act Would Further Limit Non-Compete Agreements

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Last week, politicians reintroduced the federal Workforce Mobility Act, a bipartisan bill intended to limit the use of non-compete agreements with U.S. employees. As the bill states, “economists now estimate that 1 in 5 workers is covered by a non-compete agreement.” It further finds that non-compete agreements are “blunt instruments that crudely protect employer interests and place a drag on national productivity by forcing covered workers to wither idle for long periods of time or leave the industries in which the workers have honed their skills altogether... [they] also reduce wages, restrict worker mobility, impinge on the freedom of a worker to maximize labor market potential, and slow the pace of innovation in the United States.” The *Workforce Mobility Act* would:

- Limit the use of non-competes to business sales and dissolution of partnerships;
- Require most employers to post a notice of the law for employees;
- Allow the Federal Trade Commission to bring an action to enforce the act according to the Federal Trade Commission Act;
- Direct the Department of Labor to investigate violations – confidentially - and allow it and state attorneys general to bring legal action against the employer who uses a non-compete; and
- Provide that employees may sue their employers or former employers to enforce the act, recovering both actual damages and attorney’s fees and costs.

If this act passes, it will expose employers to a minefield of liabilities and enforcement actions. At this point, given both the proposed FTC rule banning non-competes, [discussed in my previous blog](#), companies need to meet with their attorneys regarding protecting information, assets, and business by means of other agreements. Prediction from this litigator/ agreement drafter: if this bill passes, a great deal of litigation is coming. This bill doesn’t allow employees to agree to arbitrate any of these disputes. Employees will have little disincentive to file because they will recover their attorney’s fees and costs if they win the lawsuit.

Looking forward, it will be more important than ever to craft an up-to-date agreement with employees to protect a business and its trade secrets.